

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 975 of 1986

with

FIRST APPEAL NO. 976 OF 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COLLECTOR OF MEHSANA

Versus

I P MISSION TRUST,

Appearance:

Mr. P.G.Desai, GOVERNMENT PLEADER for appellant in FA
975 OF 1986

Mr.A.J.Desai, .Asstt.G.P. for appellant in FA 576/86

MR MC BHATT for Respondent No. 1 in FA 975/86

Respondent served in FA 976/86

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE J.R.VORA

Date of decision: 22/01/98

ORAL JUDGEMENT Coram: Bhatt, J.

Since both these appeals arise out of one and common judgment and award in respect of the acquired land and involve identical questions, we deem it expedient to deal with and decide the same simultaneously. Therefore, both the appeals are being disposed of by this common judgment.

A skeleton projection of facts giving rise to these appeals may be narrated in brief at the outset. The appellants are the original opponents and respondents are the original claimants. Pursuant to notification under section 4 (1) of the Land Acquisition Act, 1894 ('the Act') in respect of compulsory acquisition of the land situated in Mehsana town, measuring about 48 Acre out of total area of 1 acre-33 Acre forming part of original survey Number 1990/138 for the purpose of Telephone Exchange, the land acquisition officer recorded an award under Section 11 of the Act whereby the original claimants came to be awarded market value at the rate of Rs.22/- per sq.mt. which came to be apportioned in the ratio of one-third : two third between the tenant and the landlord. Land Acquisition Reference No.42 and 44 of 1981 were filed by the landlord and tenant in respect of the acquired land respectively and being dissatisfied with the award under Section 11, by the Land Acquisition officer by getting reference made under Section 18 in which the Reference court - District court, Mehsana granted the Reference in part.

While allowing Reference Cases Nos. 42 and 44 of 1981 in part, the Reference court directed to pay additional amount of Rs. 28 per sq.mt. (Rs. 22/- awarded by the Land Acquisition officer and additional amount of Rs. 28/- = Rs.50/-) apportioning one-third to the landlord and two-third to the tenant. The Reference court also found that the claimants are entitled to benefits of amended provisions of Section 23 (1A), 23 (2) and 28 of the Act.

Being aggrieved by the enhanced amount awarded by the Reference court in respect of both the References, the acquiring body, Collector of Mehsana has come up before this court by taking aid of provisions of Section 54 of the Act.

Insofar as grant of benefits of amended provisions of Section 23 (1A), 23 (2) and 28 by the Reference court is concerned, it is rightly jointly submitted that those amended provisions shall not be invocable in these References as the award passed by the Land Acquisition

officer under Section 11 on 31.7.1981 was prior to the date of introduction of the aforesaid provisions. Consequently, the observations of the Reference court in paras 6,7 and 10 of the Award with regard to the benefit of the aforesaid amended provisions obviously shall not be awardable. Therefore, the claimants shall not be entitled to the benefit of provisions of Section 23 (1A) as stated in para 7. In other words, the claimants shall not be entitled to enhanced award by way of additional compensation from 5.7.1979 to 31.7.1981. This finding of the Reference court is not permissible and legal. Therefore, it is quashed.

Likewise, grant of solatium at 30% in addition to the value of land under Section 23 (2) is also not sustainable being not legal. Instead, in view of the then prevailing provisions of the Act, 15% solatium in addition to the value of land would be permissible. In other words, the claimants shall be entitled to 15% solatium on the value of land by way of additional compensation and not 30%.

Obviously, that would take us to appreciation of provisions of Section 28. Since there is consensus on this aspect, it will not detain us any longer for examining it minutely. It is rightly submitted by the learned Government Pleader, which could not be controverted, that amended provisions of enhanced rate of interest under Section 28 came into operation by virtue of amendment by Act No.68/84, whereas, the award in the present case came to be passed under Section 11 on 31.7.1981 as stated above. Consequently, the claimants shall be entitled to 4 1/2% (four and half per cent) which was the rate of interest prevalent then in the State of Gujarat by virtue of amendment in the Act till the Land Acquisition (Gujarat Unification and Amendment) Act XX of 1965. In Section 28, the rate of interest was 4% before the said amendment. However, it was raised to the extent of 4 1/2% by virtue of the amendment in 1965 which will govern the present case, so far as interest is concerned. We make it clear that award of interest which the claimants shall be entitled to 4 and 1/2 % only and not as awarded by the Reference court in light of the amended provisions of Section 28 which would not be attracted to the facts of the present case.

Lastly, it would bring into field the question of assessment of market value of the acquired land. The land acquisition officer assessed the market value of the land acquired under Section 23 of the Act, at the relevant time, at the rate of Rs. 22/- per sq.mt. which came to

be enhanced by the Reference court to an amount of Rs. 28/- per sq.mt. In other words, compensation of the land became awardable to the claimants at the rate of Rs. 50/- per sq.mt. which came to be apportioned between the landlord and tenant in the ratio of 1/3 : 2/3. The Reference court has placed reliance on the sale instance at Ex.19. The land covered under the said sale instance is survey No. 1990/129; whereas, survey number of the acquired land of 47 Are out of 1 acre and 3 Are is bearing survey No.1990/138. The distance between the acquired land and the land covered under the said sale instance is within the range of 300 to 500 meters. Ex.19 is proved by leading evidence of the purchaser, Mr. Vyas who is examined at Ex. 16. The amount of market value is said to be at Rs.46/per sq.mt. in the sale deed, ex. 19. There cannot be any dispute about the settled proposition that judicial notice can be taken of the factual aspect that upward rise and revision by way of appreciation in the market of land is common phenomenon in the years when acquisition came to be made. Therefore, Reference court adopted the criterion of appreciation and reduced it in view of smallness of land covered under the sale instance.

In the peculiar facts and special circumstances with regard to geographical location, surroundings and other aspects emerging from the record of the present case in respect of the acquired land, for the purpose of commencement of Electronic Telephone Exchange in the city of Mehsana, we have not been able to accept the contention that the assessment of the market value made by the Reference court is in any way unjust, illegal or unreasonable requiring our interference exercising our power under Section 54 of the Act, more so, due to the fact that the appellants in both the appeals have not led any evidence worth the candle against the evidence of the claimants. The Reference court has made critical evaluation of the evidence of witnesses and the documentary evidence in general and documentary evidence at Ex. 19, the sale instance which is of adjoining land, in particular. It is in these circumstances that the learned Government pleader has failed to convince us that the assessment of market value under Section 23 of the acquired land made by the Reference court enhancing the amount to Rs.28/- over and above the amount of award made by the Land Acquisition officer under Section 11 is excessive, exorbitant or in any way unreasonable. We, therefore, find that both these appeals are required to be partly allowed only as stated hereinabove insofar as benefits under the amended provisions of Section 23 (1A), 23 (2) and 28 of the Act are concerned. Remaining

part of the amount under the judgement and award requires no alteration or modification.

In view of the peculiar facts and circumstances ,we deem it expedient to direct the parties to bear their own costs.The impugned award shall stand modified only to the aforesaid extent. Before parting,our attention was drawn that the amount awarded which now stands modified has not been fully deposited or paid. In the circumstances, we direct the appellants in both the appeals to work out and calculate in terms of our observations and directions as aforesaid and deposit the remaining amount in the Reference court within a period of six weeks from today, if not covered by the amount so far paid.
